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Fax Transmission | September 21, 2005

TO: Commissioner for
Patents
Attn: Examiner David A. Redding
Patent Examining Corps
Facsimile Center
Washington, D.C. 20231

FROM: Brian H. Batzli

OUR REF: 08436.0073USC1
TELEPHONE: (612) 332-5300

Total pages, including cover letter: 8

PTO FAX NUMBER 571.273.8300

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Title of Document Transmitted:

Communication and Courtesy Copy of last
Office Action in Parent CaseApplicant: Paul Brown
Serial No.: 10/639947
Filed: 08/12/2003
Group Art Unit: 1744
Confirmation No.: 6987
Our Ref. No.: 08436.0073USC1

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate.

By: Name: Brian H. BatzliReg. No.: 32,960

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Lisa R. Hill9-21-05
Date

GEN031JXXC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: BROWN et al.
Serial No.: 10/639,947
Filed: 08/12/2003
Confirmation No.: 6987

Examiner: David A. Redding
Group Art Unit: 1744
Docket: 8436.73USC1
Notice of Allow. N/A
Date:

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SEP 21 2005

Title: MECHANICAL COMPOSTING

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on September 21, 2005.

By: 

Name: Lisa R. Hill

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

23552

PATENT TRADE MARK OFFICE

COMMUNICATION

Pursuant to the Examiner's request, Applicants provide the Examiner with a courtesy copy of the last office action (mailed February 12, 2003) in the parent case (U.S. Patent Application Serial No. 09/463,148).

Respectfully submitted,

MERCHANT & GOULD
P. O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 336-4755

Date: 20 September 2005

By: 

Brian H. Batzli
Reg. No. 32,960

BHB/trh



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,148	01/18/2000	PAUL BROWN	8436.73USWO ✓	5910

23552 7590 02/12/2003

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BHB

EXAMINER

REDDING, DAVID A

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 02/12/2003

FR 2mo: Apr. 12, 2003

FR 3mo: May 12, 2003

FR 6mo: Aug. 12, 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A-9-27

Office Action Summary	Application No.		Applicant(s)	
	09/463,148		BROWN ET AL	
	Examiner		Art Unit	
	David A Redding		1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

1. Applicant's arguments filed 3/21/02 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 35-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 35 it is indefinite as to what structure is defined by "similar".

In claim 36, line 3, it is indefinite if "material" is the same or different from "biological material".

In claims 38-41 it is indefinite as to how the process limitations claimed further structurally defines the compost system.

In claims 40 and 41, "the lower air flow rates" lacks antecedent basis.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 35-41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant claims a composting system incorporating one or more chambers for bacterial breakdown of biodegradable materials at a range of infeed moisture contents wherein the aeration rate is stoichiometrically matched to biological oxygen demand plus an excess of between three and seven percent. However, nowhere in the specification is it disclosed how one skilled in the art is to make an insulated, vertical and parallel sided tower composting system to provide the aforementioned composting method. The specification makes reference to a computer model in table one. Yet table one is merely a list of thermodynamic variables of the composting process and does not enable one to make the invention.

Response to Arguments

6. Applicant argues that between table 1 and figure 1, one skilled in the art can make the compost system as claimed. Applicant asserts that Table 1 demonstrates the novelty of applicant's system and method. Further applicant states that Table 1 demonstrates that Figure 1 can be constructed as shown. Also applicant states that "[Mass balance, energy production and shrinkage can be predicated from the model set forth in table one." Also, applicant state that "A computer model has been used and set out on attached drawing labeled Table 1 is the physical thermodynamic model for the example of a single chamber module version shown in Figure 1.

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Finally, applicant references the book "The Practical Handbook of Compost Engineering", to enable those not skilled in the art to understand that with figure 1 and Table 1 the claimed invention can be made.

Applicant is reminded that the claims are currently rejected for lack of enablement and not lack of novelty.

The examiner disagrees with applicants description of Table one as a computer model. Table one is not a computer model. Table one is a list of values of thermodynamic variables of the composting process. The examiner does not doubt that the values are actual measurements gathered from a device shown in figure 1. The examiner asserts that without a model which relates the systems design (geometry, insulation thickness) with the thermodynamic variables shown in table 1, or at least those variables defined in the claims, one skilled in the art cannot make the invention as claimed.

Conclusion

5. This is a Continued Prosecution Application under 37 C.F.R. 1.53 (d) of applicant's earlier Application No. 09/463,148. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Redding whose telephone number is 703-308-3910. The examiner can normally be reached on M,T,Th,Fr, 7:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David A Redding
Primary Examiner
Art Unit 1744

D.A.R.
February 10, 2003